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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/925.333

08/09/2001

Thomas Mammone

01.38US

4422

7590

04/25/2006

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EXAMINER

WHITE, EVERETT NMN

ART UNIT

PAPER NUMBER

1623

DATE MAILED: 04/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/925,333

Applicant(s)

MAMMONE ET AL.

Examiner

Everett White

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4-7,10-14 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-7,10-14 and 17-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The amendment filed January 27, 2006 has been received, entered and carefully considered. The amendment affects the instant application accordingly:

- (A) Claims 2, 3, 8, 9, 15 and 16 have been canceled;
- (B) Claim 13 has been amended;
- (C) Comments regarding Office Action have been provided drawn to:
  - (I) 102 rejection, which has been maintained for the reasons of record.

2. Claims 1, 4-7, 10-14 and 17-19 are pending in the case.

3. The text of those sections of title 35, U. S. Code not included in this action can be found in a prior Office action.

### ***Allowability of Claims Withdrawn***

4. The indicated allowability of Claims 1 and 4-6 is withdrawn in view of the Ferguson patent (US Patent No. 5,520,926, already of record) and for the reasons provided in the rejection of Claims 7,10-14 and 17-19 in the last Office Action and the arguments presented herein.

### ***Claim Rejections - 35 USC § 102***

5. Claims 1, 4-7, 10-14 and 17-19 stand rejected under 35 U.S.C. 102(b) as being anticipated by Ferguson (US Patent No. 5,520,926) for the reasons disclosed on pages 2 and 3 of the Office Action mailed August 29, 2005.

6. Applicant's arguments filed January 27, 2006 have been fully considered but they are not persuasive. The method of exfoliating skin comprising applying to the skin a composition comprising mannose phosphate and the application of mannose phosphate for the treatment of photoaging skin are based on the same principle that involves removing the outmost layer of skin and replacing the outer layer with newly generated skin cells. Hence, upon further consideration, the subject of Claims 1 and 4-6 is inherently identical to the method of Claims 13 and 14 since the same mechanism used

to carry out the subject matter of Claims 1 and 4-6 is identical to the mechanism used in Claims 13 and 14.

Applicants argue against the rejection of the claims on the ground that the purpose of the Ferguson patent is to reduce the amount of fibers in the treated skin, which is in contrast to Applicants goal to increase the fibers in the skin to reduce lines and wrinkles. This argument is not persuasive because the instant claims do not clearly state that fibers in the skin are increase.

Also Applicants argument that there is a difference between the photo-damage skin of the Ferguson patent and the photoaged skin of the instant claims is not persuasive. Hence, Applicants argument from a legal point of view is not persuasive.

The mannose 6-phosphate applied to skin disclosed in the instant claims is identical to the mannose 6-phosphate applied to skin disclosed in the Ferguson patent. Applicants are reminded that products of identical chemical composition cannot have mutually exclusive properties. A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada* 15 USPQ 2d 1655, 1658 (Fed. Cir. 1990). See MPEP 2112.01

Accordingly, the rejection of Claims 1, 4-7, 10-14 and 17-19 under 35 U.S.C. 102(b) as being anticipated by the Ferguson patent is maintained for the reasons of record.

### ***Summary***

7. All the pending claims (Claims 1, 4-7, 10-14 and 17-19) are rejected.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

Art Unit: 1623

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Examiner's Telephone Number, Fax Number, and Other Information***


9. For 24 hour access to patent application information 7 days per week, or for filing applications, please visit our website at [www.uspto.gov](http://www.uspto.gov) and click on the button "Patent Electronic Business Center" for more information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Everett White whose telephone number is (571) 272-0660. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang, can be reached on (571) 272-0627. The fax phone number for this Group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

  
E. White

  
Shaojia A. Jiang  
Supervisory Primary Examiner  
Technology Center 1600